

1 R. Brent Wisner, Esq. (SBN: 276023)
rbwisner@wisnerbaum.com
2 Stephanie B. Sherman, Esq. (SBN: 338390)
ssherman@wisnerbaum.com
3 WISNER BAUM, L.L.P
4 11111 Santa Monica Boulevard, Suite 1750
Los Angeles, CA 90025
5 Telephone: (310) 207-3233 *Attorneys for*
Plaintiffs Efren Ramos, Joshua Cross, and
6 *Marisol Scharon*

7 Marcus J. Bradley, Esq. (SBN 174156)
mbradley@bradleygrombacher.com
8 Kiley L. Grombacher, Esq. (SBN 245960)
kgrombacher@bradleygrombacher.com
9 BRADLEY/GROMBACHER, LLP
31365 Oak Crest Drive, Suite 240
10 Westlake Village, California 91361
Telephone: (805) 270-7100
11 Facsimile: (805) 270-7589
12 *Attorneys for Plaintiff George Teron*

David S. Kurtzer-Ellenbogen (*pro hac vice*)
dkurtzer@wc.com
Paul E. Boehm (*pro hac vice*)
pboehm@wc.com
Jessica Bodger Rydstrom (SBN 256600)
jrydstrom@wc.com
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, SW
Washington, DC 20024
Tel. (202) 434-5000

Ingrid K. Campagne (SBN 162164)
icampagne@wfbm.com
WFBM LLP
19900 MacArthur Blvd., Suite 1150
Irvine, California 92612-2445
Tel. (714) 643-2522

Attorneys for Defendants Alchemee LLC and
Taro Pharmaceuticals U.S.A., Inc.

13
14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **SAN JOSE DIVISION**

16 George Teron, individually and on behalf of
all others similarly situated,

17 Plaintiffs,

18 v.

19 Alchemee LLC and
20 Taro Pharmaceuticals U.S.A., Inc.,

21 Defendants;

22 and

23 Efren Ramos, Joshua Cross, and
Marisol Scharon, on behalf of themselves and
all others similarly situated,

24 Plaintiffs,

25 v.

26 Alchemee LLC and Does 1 to 50, Inclusive,

27 Defendants.
28

Nos. 5:24-cv-01918-BLF, 5:24-cv-02230-BLF

JOINT RESPONSE TO ORDER TO
SHOW CAUSE

INTRODUCTION

On May 8, 2024, the Court ordered the parties to show cause why the above two cases should not be consolidated for all purposes and why a consolidated complaint should not be filed. ECF No. 18.¹ The parties have met and conferred, and jointly respond that, in the interest of efficiency, the Court (1) should consolidate these cases now for all purposes, but (2) should defer consideration of a consolidated complaint, and should pause the deadline for Defendants to respond to the existing complaints, until certain forum questions are resolved (specifically, until the Judicial Panel on Multidistrict Litigation (“JPML”) resolves Plaintiffs’ expected petition seeking an MDL pursuant to 28 U.S.C. § 1407 and this Court has evaluated Defendants’ forthcoming motion to transfer pursuant to 28 U.S.C. § 1404).

RESPONSE TO ORDER TO SHOW CAUSE

On May 7, 2024, the Court granted Defendants’ administrative motion to relate the above two cases. *See* ECF No. 13 (motion); ECF No. 16 (Order). The Court found that the two “actions concern substantially the same parties, property, transaction, or event,” and that “conducting the two cases before different judges would lead to an unduly burdensome duplication of labor and expense” and risk conflicting results. ECF No. 16 at 1, 3. In particular, the Court noted that “both suits are grounded in the identical theory of alleged degradation of [benzoyl peroxide] products to unsafe levels of benzene, based on the same citizen petition recently filed with the FDA,” and include overlapping causes of action asserted by “virtually identical” putative classes. *Id.* at 3.

1. The Court should consolidate *Ramos* and *Teron*. Consolidation may be appropriate where multiple actions before the Court “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). The decision to consolidate is subject to the Court’s “broad discretion.” *Inv’rs Research Co. v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). In making that determination, “the Court should weigh the interest of judicial convenience

¹ Docket references are to the lower-numbered *Teron* action.

1 against the potential for delay, confusion[,] and prejudice.” *Zhu v. UCBH Holdings, Inc.*, 682 F.
2 Supp. 2d 1049, 1052 (N.D. Cal. 2010) (internal citation omitted).

3 The Court has already found that the two cases at bar involve common questions of law
4 or fact. ECF No. 16 at 1. Plaintiffs in both cases are “California residents who allege purchases
5 of Alchemee’s acne treatment products containing benzoyl peroxide.” *Id.* at 1. And both
6 “advance substantially similar theories of liability” stemming from the same citizen petition and
7 pertaining to Proactiv® products. *Id.* at 2. Meanwhile, the parties see no “potential for delay,
8 confusion, and prejudice” attendant to consolidation. As the Court already has observed,
9 “pretrial proceedings and trial plainly would involve many of the same factual and legal issues.”
10 *Id.* at 3. Thus, the Court should consolidate these cases pursuant to Rule 42(a) for all purposes.

11 2. The Court should defer consideration of a consolidated complaint, and pause
12 Defendants’ responses to the complaints, pending the resolution of forum questions. The parties
13 respectfully jointly submit that the Court should defer deciding whether a consolidated pleading
14 should be prepared, and should suspend the deadlines for Defendants to respond to the operative
15 complaints, until after the JPML resolves Plaintiffs’ forthcoming MDL petition under 28 U.S.C.
16 § 1407 and this Court evaluates Defendants’ motion to transfer venue under 28 U.S.C. § 1404.
17 Numerous other similar suits have been brought in jurisdictions across the country against other
18 companies that manufacture or sell acne treatment products.² Defendants previously noted to the

19 ² See, e.g., *Montenegro v. CVS*, No. 2:24-cv-1876 (C.D. Cal., filed Mar. 7, 2024); *Navarro v.*
20 *Target*, No. 1:24-cv-280 (E.D. Cal., filed Mar. 7, 2024); *Grossenbacher v. L’Oreal*, No. 2:24-cv-
21 663 (E.D. La., filed Mar. 15, 2024); *Snow v. L’Oreal*, No. 1:24-cv-110 (D. Haw., filed Mar. 8,
22 2024); *Miller v. Target*, No. 24-cv-1323 (D. Minn., filed Apr. 12, 2024); *Mitchell v. Kenvue*, No.
23 3:24-cv-4109 (D.N.J., filed Mar. 22, 2024); *Garcia v. Crown Labs, Inc.*, No. 4:24-cv-1448
24 (N.D. Cal., filed Mar. 8, 2024); *Williams v. Walmart*, No. 1:24-cv-2173 (N.D. Ill., filed Mar. 15,
25 2024); *Sanderlin v. Walmart*, No. 4:24-cv-1656 (D.S.C., filed Apr. 2, 2024); *Nelson v. RB*
26 *Health*, No. 24-cv-60782 (S.D. Fla., filed May 9, 2024).

1 Court that the two cases at issue here are among six putative class actions claiming economic
2 losses associated with the purchase of Alchemee’s acne treatment products, all filed within days
3 or weeks after the March 2024 citizen petition. *See* ECF No. 14 at 1-2. In light of the above, (1)
4 Plaintiffs intend to petition the JPML this week pursuant to 28 U.S.C. § 1407 for the formation
5 of a multidistrict litigation for pretrial proceedings and transfer of all actions to this Court, and
6 (2) Defendants have moved to transfer one case filed against them from the Central District of
7 California to the Southern District of New York pursuant to 28 U.S.C. § 1404, and intend to do
8 the same in the instant cases and the other cases pending against them. Thus, although Plaintiffs
9 have not consented to Defendants’ transfer motion and Defendants have not consented to
10 Plaintiffs’ JPML petition, all parties agree that predicate questions regarding the forum for these
11 matters should be resolved first.

12 The Court possesses “inherent power to control the disposition of the causes on its docket
13 in a manner [that] will promote economy of time and effort for itself, for counsel, and for
14 litigants.” *Amey v. Cinemark USA Inc.*, 2013 WL 12143815, at *1 (C.D. Cal. Oct. 18, 2013)
15 (citation and quotation omitted). “Whether or not to grant a stay is within the court’s discretion
16 and it is appropriate when it serves the interests of judicial economy and efficiency.” *Cooper v.*
17 *Siddighi*, 2013 WL 12140988, at *3 (C.D. Cal. May 8, 2013). In the context of transfer, courts
18 consider three factors in evaluating whether to grant a stay: “(1) [the] potential prejudice to the
19 non-moving party; (2) [the] hardship and inequity to the moving party if the action is not stayed;
20 and (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases
21 are in fact consolidated.” *Id.*

22 The parties ask this Court to stay the case pending the resolution of proceedings that will
23 determine the forum for these cases. Because the parties agree on the proper course, the first two
24 factors are definitionally satisfied. “No harm should result from a brief delay while [this Court]
25 decides whether to transfer this case.” *Jones v. Sanofi US Servs. Inc.*, 2018 WL 6842605, at *1
26 (C.D. Cal. Nov. 19, 2018). A stay will also conserve judicial resources if either Plaintiffs’ JPML
27 petition or Defendants’ transfer motion is granted. *See, e.g., Couture v. Hoffman-LaRoche, Inc.*,
28 2012 WL 3042994, at *2 (N.D. Cal. July 25, 2012) (preservation of judicial resources is “a

1 primary factor”); *Jones*, 2018 WL 6842605, at *2 (without a stay, the Court “will have
2 needlessly expended its energies” learning “intricacies of the case” and “replicat[ing]” efforts by
3 the judge handling the consolidated litigation (citation and quotation omitted)). For these
4 reasons, courts commonly pause proceedings pending a determination of transfer. *See, e.g.*,
5 *Couture*, 2012 WL 3042994, at *4 (staying proceedings pending JPML transfer decision);
6 *Nielsen v. Merck & Co.*, 2007 WL 806510, at *3 (N.D. Cal. Mar. 15, 2007) (same); *Qualls v.*
7 *Ford Motor Co.*, 2023 WL 5723248, at *1 (C.D. Cal. July 19, 2023) (same); *Jones*, 2018 WL
8 6842605, at *2 (same).

9 The parties respectfully request that the Court await the JPML’s decision and evaluate
10 Defendants’ motion to transfer (which will be filed on or before the current deadline to respond
11 to the complaints) before determining whether to direct the preparation of a single consolidated
12 complaint—and for the same reasons, respectfully request that the Court suspend Defendants’
13 deadline to respond to the existing complaints.

14 CONCLUSION

15 For the foregoing reasons, the parties respectfully request that the Court (1) consolidate
16 these cases now for all purposes and (2) defer the consideration of whether Plaintiffs’ must file a
17 consolidated complaint, and pause the deadline for Defendants to respond to the existing
18 complaints, until the Judicial Panel on Multidistrict Litigation (“JPML”) resolves Plaintiffs’
19 expected petition seeking an MDL pursuant to 28 U.S.C. § 1407 and this Court has evaluated
20 Defendants’ forthcoming motion to transfer pursuant to 28 U.S.C. § 1404.

1 Dated: May 22, 2024

2
3 Respectfully submitted,

4
5 /s/ Stephanie B. Sherman

6 R. Brent Wisner, Esq. (SBN: 276023)
7 rbwisner@wisnerbaum.com
8 Stephanie B. Sherman, Esq. (SBN: 338390)
9 ssherman@wisnerbaum.com
10 WISNER BAUM, L.L.P.
11 11111 Santa Monica Boulevard, Suite 1750
12 Los Angeles, CA 90025
13 Telephone: (310) 207-3233 *Attorneys for*
14 *Plaintiffs Efren Ramos, Joshua Cross, and*
15 *Marisol Scharon*

16 /s/ Kiley L. Grombacher

17 Marcus J. Bradley, Esq. (SBN 174156)
18 mbradley@bradleygrombacher.com
19 Kiley L. Grombacher, Esq. (SBN 245960)
20 kgrombacher@bradleygrombacher.com
21 BRADLEY/GROMBACHER, LLP
22 31365 Oak Crest Drive, Suite 240
23 Westlake Village, California 91361
24 Telephone: (805) 270-7100
25 Facsimile: (805) 270-7589
26 *Attorneys for Plaintiff George Teron*

27
28 *Counsel for Plaintiffs*

/s/ Ingrid K. Campagne

Ingrid K. Campagne (SBN 162164)
icampagne@wfbm.com
WFBM LLP
19900 MacArthur Blvd., Suite 1150
Irvine, California 92612-2445
Tel. (714) 643-2522

David S. Kurtzer-Ellenbogen (*pro hac*
vice)
dkurtzer@wc.com
Paul E. Boehm (*pro hac vice* forthcoming)
pboehm@wc.com
Jessica Bodger Rydstrom (SBN 256600)
jrydstrom@wc.com
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, SW
Washington, DC 20024
Tel. (202) 434-5000

Counsel for Defendants

[illegible]

Ingil Campagne

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28